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EXAMINER				
CARDENAS NAVIA, JAIME F				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/801,531

**Applicant(s)**

MILLER ET AL.

**Examiner**

Jaime Cardenas-Navia

**Art Unit**

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Introduction***

1. This **NON-FINAL** office action is in response to communications received on July 6, 2009. Claim 1 has been amended. Claims 1-18 are currently pending.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 6, 2009 has been entered.

### ***Response to Arguments***

3. Applicant's arguments have been fully considered by the Examiner. In particular, Applicant argues that:

(A) regarding independent claim 1, Huang does not teach or suggest calculating during the promotion a product demand level over a remainder of the current product sales promotion; and

(B) all dependent claims are allowable as a result of (A).

**Regarding argument (A)**, Examiner respectfully disagrees. Huang teaches modeling demand during promotions based on promotion type and duration (col. 52-55), similar to

Applicant's invention (par. 59). The demand forecasting, product ordering, and inventory repositioning taught by Huang can be carried out at any time, and indeed, contains algorithms for doing so specifically for the short-term, specifically during planning horizons, such as promotion periods. Col. 79, lines 45-53 of Huang teaches short-term, rolling horizon planning, which enables "taking into advantage updated information about demands and production capacities". This short-term rolling horizon planning forecast would certainly calculate demand over a remaining period of the current product sales promotion.

**Regarding argument (B)**, Examiner relies on the argument above.

*Official Notice*

4. The Examiner would like to note the requirements for traversing official notice from MPEP § 2144.03:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate [emphasis added].

Because Applicant has not specifically pointed out any errors in the Examiner's action, the officially noticed facts in the previous office action are deemed admitted prior art.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1, 3, 4, 6, 7, 13, 14, and 17 are rejected** under 35 U.S.C. 102(b) as being anticipated by Huang et al. (US 5,953,707).

**Regarding claim 1**, Huang teaches a computer implemented method of product ordering and inventory repositioning for a promotion in a supply chain management system utilizing a network (fig. 5, 12), comprising:

obtaining, during a current product sales promotion, via the network from a plurality of stores in a first region, each store associated with a respective distribution center within the first region, point of sale data for a first period of time less than a length of time allotted for a current product sales promotion (fig. 12, col. 18, lines 45-67, col. 19, lines 1-7, col. 20, lines 40-42, col. 33, lines 8-15, col. 79, lines 45-53 of Huang teaches short-term, rolling horizon planning, which enables "taking into advantage updated information about demands and production capacities");

causing, during the current product sales promotion, a computer calculation of a product demand level for stores associated with at least one distribution center for the current product sales promotion based on an outlook model and the point of sale data (col. 18, lines 45-67, col.

19, lines 1-7, col. 33, lines 8-15, col. 79, lines 45-53 of Huang teaches short-term, rolling horizon planning, which enables "taking into advantage updated information about demands and production capacities");

causing, during the current product sales promotion, a computer calculation of a product amount for the at least one distribution center based at least in part on the product demand level for stores associated with the at least one distribution center (col. 19, lines 20-61, col. 79, lines 45-53 of Huang teaches short-term, rolling horizon planning, which enables "taking into advantage updated information about demands and production capacities"); and

taking, during the current product sales promotion, an electronic action based on the product amount for the at least one distribution center (col. 21, lines 65-67, col. 22, lines 1-56, forecast performance evaluations are electronic actions based on the product amount, col. 79, lines 45-53 of Huang teaches short-term, rolling horizon planning, which enables "taking into advantage updated information about demands and production capacities").

**Regarding claim 3**, Huang teaches wherein the outlook model is for the first region, and wherein the causing a computer calculation of a product demand level for stores associated with at least one distribution center is based at least in part on a product demand level for the stores in the first region for the current product sales promotion based on the outlook model and the point of sale data (fig. 12, col. 18, lines 45-67, col. 19, lines 1-7, col. 20, lines 40-42, col. 33, lines 8-15).

**Regarding claim 4**, Huang teaches wherein the causing, during the current product sales promotion, a computer calculation of a product demand level for stores associated with at least one distribution center comprises:

causing, during the current product sales promotion, a computer calculation of a product demand level for stores associated with one distribution center for the current product sales promotion based on the outlook model and on point of sale data for the short period of time obtained from at least one store associated with the one distribution center (col. 18, lines 45-67, col. 19, lines 1-7, col. 33, lines 8-15).

**Regarding claim 6**, Huang teaches wherein the product demand level calculated for the stores in the first region includes a demand level for stores for which no point of sale data has been obtained in the current product promotion (col. 18, lines 60-64, col. 19, lines 31-57, top-down forecasting does not use POS data).

**Regarding claim 7**, Huang teaches wherein the causing a computer calculation of a product demand level for stores associated with at least one distribution center comprises:

causing a computer calculation of a product demand level for stores associated with one distribution center for the current product sales promotion based on the outlook model and on point of sale data for the first period of time obtained from at least one store associated with the one distribution center (fig. 12, col. 18, lines 45-67, col. 19, lines 1-7, col. 20, lines 40-42, col. 33, lines 8-15).

**Regarding claim 13**, Huang teaches causing a computer calculation of a product component amount for the at least one distribution center based on the product amount for the at least one distribution center and a component file listing the product components of the product (fig. 16-18, forecasting of components is included as part of supply chain management, fig. 66, 68, 70, listing of product components, col. 24, lines 54-64, production requirements and component availability are based on sales plan).

**Regarding claim 14**, Huang teaches causing a computer calculation of a product inventory needed at the at least one distribution center based at least in part on the product amount for the at least one distribution center, and product inventory within the supply chain and accessible by the at least one distribution center or the stores associated with the at least one distribution center (col. 14, lines 5-19, fig. 17, 20, col. 68, lines 54-67).

**Regarding claim 17**, Huang teaches wherein the electronic action comprises repositioning inventory or generating a purchase order for additional products based at least in part on the product inventory needed (col. 14, lines 5-19, fig. 17, 20).



***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 2 and 8-12 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (US 5,953,707) as applied to claim 1, further in view of Sheldon et al. (US 5,765,143).

**Regarding claim 2**, Huang teaches obtaining via the network from multiple distribution centers in the supply chain historical invoice data, the historical invoice data indicative of products ordered for historical product sales promotions from the distribution centers by stores associated with the respective different distribution centers (fig. 5, 12, col. 18, lines 64-67, col. 19, lines 1-3).

Huang does not teach causing a computer determination of correlations among multiple distribution centers based on the historical invoice data, and indicating that a predictor/predictee relationship exists between pairs of the distribution centers if the pair of distribution centers exhibits at least a predetermined correlation; and

causing a computer calculation of a predictor/predictee index value for the predictor/predictee pairs based on the historical invoice data, where the predictor/predictee index value indicates the ratio of the product sales volume for stores in the predictee distribution center to the product sales volume for stores in the predictor distribution center determined based on the historical product invoice data.

Sheldon teaches causing a computer determination of correlations among multiple distribution centers based on the historical invoice data, and indicating that a predictor/predictee relationship exists between pairs of the distribution centers if the pair of distribution centers exhibits at least a predetermined correlation (col. 8, lines 57-63, statistical correlation of sales between stores is predictor/predictee relationship, predetermined correlation is implied); and

causing a computer calculation of a predictor/predictee index value for the predictor/predictee pairs based on the historical invoice data, where the predictor/predictee index value indicates the ratio of the product sales volume for stores in the predictee distribution center to the product sales volume for stores in the predictor distribution center determined based on the historical product invoice data (col. 8, lines 34-63, statistical correlation of sales between stores is predictor/predictee relationship, weighting factor is equivalent of index value).

The inventions of Huang and Sheldon pertain to forecasting demand. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Sheldon does not teach away from or contradict Huang, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantages of simplicity and smaller data sets by forecasting demand using indices.

**Regarding claim 8**, Huang teaches wherein the causing, during the current product sales promotion, a computer calculation of a product demand level for stores associated with at least one distribution center comprises:

causing a computer calculation of a product demand level for the stores associated with a first distribution center for the current product sales promotion based on the outlook model and on point of sale data for the first period of time obtained from at least one store associated with the first distribution center (fig. 12, col. 18, lines 45-67, col. 19, lines 1-7, col. 20, lines 40-42, col. 33, lines 8-15).

Huang does not expressly teach when a predictor/predictee relationship exists between the first distribution center and a second distribution center, causing a computer calculation of a product demand level for the stores in the second distribution center for the current product sales promotion based on the product demand level calculated for the first distribution center and a predictor/predictee index value for the first and second distribution centers.

Sheldon teaches when a predictor/predictee relationship exists between the first distribution center and a second distribution center, causing a computer calculation of a product demand level for the stores in the second distribution center for the current product sales promotion based on the product demand level calculated for the first distribution center and a predictor/predictee index value for the first and second distribution centers (col. 8, lines 3-63, statistical correlation of sales between stores is predictor/predictee relationship, weighting factor is equivalent of index value).

The inventions of Huang and Sheldon pertain to forecasting demand using POS data. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Sheldon does not teach away from or contradict Huang, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements,

and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantages of simplicity and smaller data sets by forecasting demand using indices.

**Regarding claim 9**, Huang does not expressly teach wherein the product demand level for the stores in the second distribution center is calculated to be the product demand level for the stores in the first distribution center multiplied by the predictor/predictor index.

Sheldon teaches wherein the product demand level for the stores in the second distribution center is calculated to be the product demand level for the stores in the first distribution center multiplied by the predictor/predictor index (col. 8, lines 3-63, statistical correlation of sales between stores is predictor/predictor relationship, weighting factor is equivalent of index value).

The inventions of Huang and Sheldon pertain to forecasting demand using POS data. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Sheldon does not teach away from or contradict Huang, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantages of simplicity and smaller data sets by forecasting demand using indices.

**Regarding claim 10**, Huang does not expressly teach wherein the causing a computer calculation of a product demand level for the stores in the second distribution center is performed

only when point of sale data has not been obtained during the current product sales promotion for a threshold number of stores associated with the second distribution center.

Examiner respectfully notes that "only when..." is intended use language and does not modify and of the steps or results of the method, only when the method is performed. Thus, it will not patentably distinguish the claimed invention from the prior art.

Sheldon teaches wherein the causing a computer calculation of a product demand level for the stores in the second distribution center is performed only when point of sale data has not been obtained during the current product sales promotion for one or more stores associated with the second distribution center (col. 8, lines 3-63, statistical correlation of sales between stores is predictor/predicted relationship, weighting factor is equivalent of index value).

The inventions of Huang and Sheldon pertain to forecasting demand using POS data. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Sheldon does not teach away from or contradict Huang, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantages of simplicity and smaller data sets by forecasting demand using indices.

**Regarding claim 11**, Huang teaches collecting historical invoice data from at least one historical product sales promotion (fig. 12, col. 18, lines 64-67, col. 19, lines 1-7, demand history data is historical invoice data).

Huang does not expressly teach wherein the determination of the correlation between the first distribution center and the second distribution center is based on historical invoice data from at least one historical product sales promotion.

Sheldon teaches wherein the determination of the correlation between the first distribution center and the second distribution center is based on historical invoice data (col. 8, lines 52-63).

The inventions of Huang and Sheldon pertain to forecasting demand. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Sheldon does not teach away from or contradict Huang, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantages of using data that most closely resembles the conditions of what is being forecast.

**Regarding claim 12**, Huang teaches wherein the causing a computer calculation of a product demand level for stores associated with at least one distribution center comprises:

when point of sale data has not been obtained during the current product sales promotion for a threshold number of stores associated with one distribution center and when there is no predictor/predictee relationship between the one distribution center and any of the distribution centers for which point of sale data has been obtained for the threshold number of stores during the current product sales promotion, causing a calculation of a product demand level of stores

associated with the one distribution center based on historical invoice data for the one distribution center and the outlook model (fig. 12, col. 18, lines 45-67, col. 19, lines 1-7, 31-57).

Examiner respectfully notes that "when point of sale...current product sales promotion" is intended use language and does not modify and of the steps or results of the method, only when the method is performed. Thus, it will not patentably distinguish the claimed invention from the prior art.

9. **Claim 5 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (US 5,953,707) as applied to claim 4.

**Regarding claim 5**, Huang does not expressly teach wherein the calculation of the average product demand level per day for the stores associated with the one distribution center comprises multiplying a per day average product demand level over the short period of time for an average store associated with the one distribution center by the per day average product demand level over the promotion for an average store within the first region, and dividing by the per day average product demand level for the average store within the first region over the short period of time (i.e. the ratio of average demand per day in a DC to a region in the short term is equal to the ratio of average demand per day in a DC to a region in a longer time period).

Official notice is given that forecasting demand using ratios of smaller sample sizes to larger sample sizes is old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and

the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantages of simplicity and smaller data sets by forecasting demand using ratios.

10. **Claims 15 and 16 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (US 5,953,707) as applied to claim 14.

**Regarding claim 15**, Huang does not expressly teach wherein the electronic action comprises displaying electronically the product inventory needed in an alert message.

Official notice is given that wherein the electronic action comprises displaying electronically the product inventory needed in an alert message is old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of quickly conveying important inventory information.

**Regarding claim 16**, Huang does not expressly teach wherein the electronic action comprises posting the product inventory needed to a website.

Official notice is given that wherein the electronic action comprises posting the product inventory needed to a website is old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective



functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage in increased accessibility to important inventory information.

11. **Claim 18 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (US 5,953,707) as applied to claim 1, further in view of Schroeder et al. (US 2003/0130883 A1).

**Regarding claim 18**, Huang does not expressly teach wherein the outlook model is for a first product, and further comprising:

causing a computer calculation of a second product change index based on historical point of sale data for a second product;

causing, during the current product sales promotion, a computer calculation of a product demand level for the second product for the stores associated with the at least one distribution center for the current product sales promotion based on an outlook model for the second product, the second product change index, and point of sale data obtained during the current promotion.

Schroeder teaches wherein the outlook model is for a first product, and further comprising:

causing a computer calculation of a second product change index based on historical point of sale data for a second product (par. 83, 84, cross-elasticity is equivalent of second product change index, par. 92, 93);

causing, during the current product sales promotion, a computer calculation of a product demand level for the second product for the stores associated with the at least one distribution

center for the current product sales promotion based on an outlook model for the second product, the second product change index, and point of sale data obtained during the current promotion (par. 83, 84, cross-elasticity is equivalent of second product change index, par. 92, 93).

The inventions of Huang and Schroeder pertain to forecasting demand of promoted and non-promoted goods. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Schroeder does not teach away from or contradict Huang, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the increase in forecast accuracy by taking into account the effect on sales during a promotion of non-promoted goods.

### *Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 18, 2009

/J. C./  
Examiner, Art Unit 3624

/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 3624